

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

v

JOCELYN BENSON and MARIO MORROW,

Defendants.

No. 1:20-cv-00768

HON. JANET NEFF

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DEFENDANT SECRETARY OF STATE'S MOTION TO DISMISS

Defendant Secretary of State Jocelyn Benson moves for dismissal of Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. Proc. 12(b)(4) and (6), for the following reasons:

1. Plaintiffs' claims for money damages against the Michigan Secretary of State are barred by the Eleventh Amendment and must be dismissed.
2. This Court should abstain from exercising jurisdiction over Counts I, IV, and V, which involve an ongoing administrative campaign finance proceeding.
3. Secretary of State Benson is entitled to qualified immunity against all of Plaintiff's claims against her in her individual capacity.
4. Plaintiff Davis's class-of-one equal protection claim must be dismissed for failing to state a claim upon which relief may be granted against Secretary Benson.
5. Plaintiff Davis's First Amendment retaliation claim must be dismissed for failing to state a claim upon which relief may be granted.
6. Plaintiff Davis's First Amendment claim regarding Michigan's campaign finance statutes must be dismissed for failing to state a claim upon which relief may be granted.
7. Plaintiff Davis's First Amendment void for vagueness claim regarding Michigan's campaign finance statutes must be dismissed for failing to state a claim upon which relief may be granted.

For these reasons and the reasons stated more fully in the accompanying brief in support, Defendant Secretary of State Jocelyn Benson respectfully requests that this Honorable Court enter an order dismissing Plaintiff's complaint against her in its entirety and with prejudice, pursuant to Fed. R. Civ. Proc. 12(b)(4) and (6).

Respectfully submitted,

Dana Nessel
Attorney General

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Dated: December 23, 2020

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2021, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via US Mail to all non-ECF participants.

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